



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

MARKETXT HOLDINGS CORP.,

Debtor.

ALAN NISSELSON, as Chapter 11 Trustee  
of MARKETXT HOLDINGS CORP., and the  
OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS,

Plaintiffs,

v.

KEVIN WALTZER and  
STEWART F. GROSSMAN, Trustee  
of the Newton Trust,

Defendants.

Chapter 11

Case No. 04-12078 (ALG)  
(Substantively Consolidated)/Adv.  
Proc. No. 08-1102

Case No. 08-CV-05963 (MGC)

**STIPULATION IN RESPECT TO APPEAL**

WHEREAS, on June 6, 2008, Kevin Waltzer and Stewart F. Grossman as Trustee of the Newton Trust, ("Appellants"), filed an appeal (the "Appeal") to the United States District Court for the Southern District of New York from the Counter Order (1) Granting Summary Judgment to Plaintiffs on Third Claim for Relief Subordinating Claim No. 4 of The Newton Trust as Assignee In Interest of Kevin Waltzer; (2) Denying Motion to Dismiss the Third Claim for Relief; and (3) Dismissing the First and Second Claims for Relief, and Deeming Such Claims for Relief as Objections to Claims Under Rule 3007 of The Federal Rules of Bankruptcy Procedure entered in this adversary proceeding on June 4, 2008 in favor of the above-named Plaintiffs (the "Notice of Appeal") (Docket No. 22). A copy of the Notice of Appeal is attached hereto as Exhibit "A".

WHEREAS, although the Office of the United States Trustee was not identified in the case caption of the Notice of Appeal as being a party to the Appeal, the Office of the United States Trustee was mistakenly named as a party on page two (2) of the Notice of Appeal.

WHEREAS, on July 1, 2008, the Appeal was docketed in the United States District Court for the Southern District of New York and assigned Case No. 1:08-cv-05963 (MGC).

NOW THEREFORE, the Appellants and the Office of the United States Trustee have agreed as follows:

The Office of United States Trustee is not now nor ever was a party to this Appeal.

This Appeal, in all other respects, shall proceed against the parties as named in the caption, Alan Nisselson, as Chapter 11 Trustee of MarketXT Holdings Corp., and The Official Committee of Unsecured Creditors.

IN WITNESS HEREOF, the parties have caused this Stipulation be executed by their duly authorized representatives on the dates indicated.

COLE, SCHOTZ, MEISEL,  
FORMAN & LEONARD, P.A.  
A Professional Corporation

By: 

Laurence May, Esq. (LM-9714)  
Michele E. Cosenza, Esq. (MC-5995)

900 Third Avenue  
New York, NY 10022  
(212) 752-8000

Attorneys for Kevin Waltzer and Stewart F.  
Grossman, Trustee of The Newton Trust.

Date: July 9, 2008

OFFICE OF THE US TRUSTEE

By: Alicia M. Leonhard  
Alicia Leonhard, Esq. (AL-6060)  
33 Whitehall Street, 21<sup>st</sup> Floor  
New York, NY 10004  
(212) 510-0500  
Attorneys for United States Trustee  
Date: July 18, 2008

5 | SO ORDERED this 22<sup>nd</sup> day of July, 2008:

\_\_\_\_\_  
United States District Court Judge

**EXHIBIT "A"**

Notice of Appeal

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

**MARKETXT HOLDINGS CORP.,**

**Debtor.**

**ALAN NISSELSON, as Chapter 11 Trustee  
of MARKETXT HOLDINGS CORP., and the  
OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS,**

**Plaintiffs,**

**v.**

**KEVIN WALTZER and  
STEWART F. GROSSMAN, Trustee  
of the Newton Trust,**

**Defendants.**

**Chapter 11**

**Case No. 04-12078 (ALG)  
(Substantively Consolidated)**

**Adv. Proc. No. 08-1102 (ALG)**

**NOTICE OF APPEAL**

Notice is hereby given that Kevin Waltzer and Stewart F. Grossman as Trustee of the Newton Trust, Defendants in the above-referenced adversary proceeding, hereby appeal to the United States District Court for the Southern District of New York from the Counter Order (1) Granting Summary Judgment to Plaintiffs on Third Claim for Relief Subordinating Claim No. 4 of The Newton Trust as Assignee In Interest of Kevin Waltzer; (2) Denying Motion to Dismiss the Third Claim for Relief; and (3) Dismissing the First and Second Claims for Relief, and Deeming Such Claims for Relief as Objections to Claims Under Rule 3007 of The Federal Rules of Bankruptcy Procedure entered in this adversary proceeding on June 4, 2008 in favor of the above-named Plaintiffs (the "Counter-Order") (Docket No. 21). A copy of the Counter-Order is attached hereto as Exhibit "A".

The parties to this appeal as represented by their attorneys are as follows:

Alan Nisselson, Esq./Howard L. Simon, Esq. Windels Marx Lane & Mittedorf, LLP 156 West 56th Street New York, NY 10019	Lester M. Kirshenbaum, Esq. Kaye Scholer, LLP 425 Park Avenue New York, NY 10022
Alicia Leonhard, Esq. Office of the US Trustee 33 Whitehall Street, 21 <sup>st</sup> Floor New York, NY 10004	

Dated: New York, New York  
June 11, 2008

**COLE, SCHOTZ, MEISEL,  
FORMAN & LEONARD, P.A.**  
A Professional Corporation  
Attorneys for the Defendants

By: Laurence May

Laurence May, Esq. (LM-9714)  
Michele E. Cosenza, Esq. (MC-5995)  
900 Third Avenue  
New York, NY 10022  
(212) 752-8000

**EXHIBIT "A"**

Counter-Order

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

MARKETXT HOLDINGS CORP.,

Debtor.

ALAN NISSELSON, as Chapter 11 Trustee  
of MARKETXT HOLDINGS CORP., and the  
OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS,

Plaintiffs,

v.

KEVIN WALTZER and  
STEWART F. GROSSMAN, Trustee  
of the Newton Trust,

Defendants.

Chapter 11

Case No. 04-12078 (ALG)  
(Substantively Consolidated)

Adv. Proc. No. 08-1102 (ALG)

**COUNTER ORDER (1) GRANTING SUMMARY JUDGMENT TO PLAINTIFFS  
ON THIRD CLAIM FOR RELIEF SUBORDINATING CLAIM NO. 4 OF THE  
NEWTON TRUST AS ASSIGNEE IN INTEREST OF KEVIN WALTZER; (2)  
DENYING MOTION TO DISMISS THE THIRD CLAIM FOR RELIEF; AND (3)  
DISMISSING THE FIRST AND SECOND CLAIMS FOR RELIEF,  
AND DEEMING SUCH CLAIMS FOR RELIEF AS OBJECTIONS TO  
CLAIMS UNDER RULE 3007 OF THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Upon Defendants' Motion to Dismiss the Third Claim for Relief seeking subordination of Claim No. 4 of the Newton Trust as Assignee of Kevin Waltzer (the "Waltzer Claim"), and upon Plaintiffs' Cross Motion for Summary Judgment on the Third Claim for Relief for Subordination of the Waltzer Claim Pursuant to Section 510(b) of the Bankruptcy Code, and by Memorandum Opinion dated May 22, 2008, the Court having determined that the Waltzer Claim should be subordinated pursuant to Section 510(b) of the Bankruptcy Code and the granting of the



summary judgment motion having resolved the issues before this Court in this adversary proceeding; it is ordered that:

1. summary judgment on the Third Claim for Relief in the adversary complaint be granted to Plaintiffs subordinating the Waltzer Claim pursuant to Section 510(b) of the Bankruptcy Code; and
2. Defendants' Motion to Dismiss be denied; and
3. Plaintiffs First and Second Claims for Relief are dismissed without prejudice and are hereby deemed to be objections to claims brought pursuant to, inter alia, Rules 3007 and 9014 of the Federal Rules of Bankruptcy Procedure.

Dated: New York, New York  
June 4, 2008

/s/ Allan L. Gropper  
ALLAN L. GROPPER  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

MARKETXT HOLDINGS CORP.,

Debtor.

ALAN NISSELSON, as Chapter 11 Trustee  
of MARKETXT HOLDINGS CORP., and the  
OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS,

Plaintiffs,

v.

KEVIN WALTZER and  
STEWART F. GROSSMAN, Trustee  
of the Newton Trust,

Defendants.

Chapter 11

Case No. 04-12078 (ALG)  
(Substantively Consolidated)

Adv. Proc. No. 08-1102 (ALG)

**ATTORNEY'S CERTIFICATE OF SERVICE**

I, Michele E. Cosenza, an attorney at the law firm of Cole, Schotz, Meisel, Forman & Leonard, P.A., duly admitted to the practice of law in the United States District Court, Southern District of New York, do hereby certify that on June 6, 2008, I caused the attached Notice of Appeal to be served upon the parties identified below by first class mail, by depositing a true copy of same in a post-paid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Alan Nisselson, Esq./Howard L. Simon, Esq.  
Windels Marx Lane & Mittedorf, LLP  
156 West 56th Street  
New York, NY 10019

Lester M. Kirshenbaum, Esq.  
Kaye Scholer, LLP  
425 Park Avenue  
New York, NY 10022

Alicia Leonhard, Esq.  
Office of the US Trustee  
33 Whitehall Street, 21<sup>st</sup> Floor  
New York, NY 10004

Dated: New York, New York  
June 6, 2008

  
Michele E. Cosenza